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No. 923

Supreme Court of the United States

OCTOBER TERM, 1949

JOHN JAMES JACKSON, *et al.*,

Petitioners,

vs.

STRAUSSER ARCHBOLDS,
LAMPORT & HOLT LINE, LTD. (CORRECTED),

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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SUPREME COURT OF THE UNITED STATES

JOHN JAMES JACKSON, *et al.*,
Petitioners,

AGAINST

Steamship "ARCHIMEDES",
LAMPORT & HOLT LINE, LTD. (Claimant),
Respondent.

October Term, 1926.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

STATEMENT

The petitioners, British seamen from a British steamer, urge an interpretation of Section 32 of the Jones Merchant Marine Act of 1920 (41 Stat. 1007) which would enable them to disregard advances of wages received on joining the steamer at Manchester, England, which are sanctioned by British law.

A similar case was presented in *Sandberg* v. *McDonald* (*The Talus*), 248 U. S. 185, decided before the enactment of the Jones Act, where this Court said:

"The statute makes the payment of advance wages unlawful and affixes penalties for its violation, and provides that such advancements shall in no cases, except as in the act provided, absolve the master from full payment after the wages are earned, and shall be no defense to a libel or suit for wages. How far was this intended to apply to foreign vessels? We find the answer if we look to the language of the act itself. It reads that this section shall apply to foreign vessels 'while in waters of the United States'" (195).

Here was the restrictive language which it was necessary to change had Congress sought to extend the statute to foreign vessels outside the waters of the United States.

The Jones Act, however, did not change this language; but, in order to forbid advances by American vessels abroad, inserted in Section 10 (*a*) of the Dingley Act of June 26, 1884, as amended by Section 11 of the La Follette Act of March 4, 1915, the following italicized words:

"The payment of such advance wages or allotment *whether made within or without the United States or territory subject to the jurisdiction thereof,* shall in no case except as herein provided absolve the vessel or the master or owner thereof from the full payment of wages * * *."

It is upon this amendment that the petitioners rely. But the District Court held that the statute as amended did not apply to the payment of advances by a foreign ship in a foreign port.

"It is contended on behalf of libellants that the amendment of the former clause by the insertion of the words 'whether made within or without the United States or territory subject to the jurisdiction thereof' shows that Congress intended to forbid advances by foreign vessels in foreign ports. But the later clause (*e*) providing that: 'This section shall apply as well to foreign vessels while in the waters of the United States, as to vessels of the United States' was in the section before amendment and remained after amendment. The words 'as well to foreign vessels while in the waters of the United States as to vessels of the United States' have no qualifying meaning if the section has the same bearing on foreign as on American vessels. It seems more logical to suppose that the words 'whether made within or without the United States' were inserted in order to prohibit advances to seamen on American vessels, though made in foreign ports, and to avoid the effect of the decision of the Supreme Court in *Neilson* v. *Rhine Shipping Co.*, 248 U. S. 205, which held such advances permissible" (Record, pp. 81-82).

This decision was affirmed *per curiam* by the Circuit Court of Appeals for the Second Circuit.

FIRST POINT

THE JONES ACT DOES NOT INVALIDATE PAYMENT OF ADVANCE WAGES TO SEAMEN BY FOREIGN VESSELS IN FOREIGN PORTS.

The legislative and judicial history of the statute in question affords ample guidance to its meaning.

The original statutory prohibition of advances of wages to seamen embodied in Sec. 10 of the Dingley Act of June 26, 1884, was held by Judge Addison Brown to be inapplicable to the shipment of seamen in foreign ports by an American vessel. *The State of Maine*, 22 Fed. 734.

"Every presumption," said Judge Brown, "is against the supposition that Congress had any intention to legislate in reference to acts done and completed wholly beyond its jurisdiction. And while Congress might, perhaps, subject the masters of American vessels, upon their return to this country, to punishment for acts done on foreign soil, though such acts were lawful there, still, such an intention would not be presumed, nor is such an intention sufficiently indicated by mere general language that can be fully satisfied by its application to all such acts committed within the territorial jurisdiction of the United States."

The provision that the act "shall apply as well to foreign vessels as to vessels of the United States", was held by this Court to make it applicable to foreign vessels in American ports. *The Eudora*, 190 U. S. 169.

The Dingley Act was amended by Sec. 11 of the LaFollette Act of March 4, 1915. As amended, Par. (*a*) repeated the provision of the prior act that

"The payment of such advance wages or allotment shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages * * *."

And the reference to foreign vessels was amplified as follows:

"(e) That this section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States, and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner or agent of a vessel of the United States would be for similar violation.

The master, owner, consignee, or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any such vessel unless the provisions of this section have been complied with."

Thus amended the statute was held by the Circuit Court of Appeals for the Second Circuit to be inapplicable to advances made in a foreign port by American vessels. *The Windrush* and *The Rhine,* 250 Fed. 180. Judge Hough said:

"This is an amendment to existing law, and the presumption is that the same words used therein have the meaning acquired by prior judicial construction. *United States* v. *Trans-Missouri Ass'n,* 58 Fed. 67, 7 C. C. A. 15, 24 L. R. A. 73. * * * The remedial and penal portions of the part of the statute under consideration cannot be separated; if what these shipmasters did in Buenos Ayres was not lawful, it was unlawful, and a misdemeanor was committed. If it be possible now and in this country to enact a law making a crime of something done by an American citizen in a foreign land (*Rex* v. *Sawyer,* 1 C. & K. 101), every and the strongest presumption is against such construction (*American, etc. Co.* v. *United Fruit Co.,* 213 U. S. 347, 29 Sup. Ct. 511, 53 L. Ed. 826, 16 Ann. Cas. 1047). The absurdity of considering the ship captains indictable is not denied; therefore the contention becomes this: That this executed contract must be set aside, because the statute in effect declares it repugnant to the 'policy and morality' of the people of the United States. We discover no consensus on this point of morals in the written law; there is no evidence on the subject, and the rule appealed to ordinarily affects only executory

contracts. The situation here is this: Libelants demand a part of their wages in accordance with the law of the United States; respondents answer, We paid you that part in Argentine in accordance with the law of that country; libelants reply, The law of the United States refuses to recognize that lawful and completed transaction. For so extreme a doctrine support can be found only in plain, unquestioned legislative order; and such order cannot be discovered in this statute."

That decision was affirmed by this Court. *Neilson* v. *Rhine Shipping Co.*, 248 U. S. 205. At the same term this Court held that the statute did not apply to advances made abroad by foreign vessels pursuant to contracts valid where made. *Sandberg* v. *McDonald* (*The Talus*), 248 U. S. 185. Mr. Justice Day said there was nothing in the language of the statute to indicate an intention to control such matters beyond waters of the United States.

"Legislation is presumptively territorial and confined to limits over which the law-making power has jurisdiction. *American Banana Co.* v. *United Fruit Co.*, 213 U. S. 347, 357. In *Patterson* v. *Bark Eudora*, *supra*, this court declared such legislation as to foreign vessels in United States ports to be constitutional. We think that there is nothing in this section to show that Congress intended to take over the control of such contracts and payments as to foreign vessels except while they were in our ports. Congress could not prevent the making of such contracts in other jurisdictions. If they saw fit to do so, foreign countries would continue to permit such contracts and advance payments no matter what our declared law or policy in regard to them might be as to vessels coming to our ports.

In the same section, which thus applies the law to foreign vessels while in waters of the United States, it is provided that the master, owner, consignee, or agent of any such vessel, who violates the provisions of the act, shall be liable to the same penalty as would be persons of like character in respect to a vessel of the United States. This provision seems to us of great importance as evidencing the legislative intent to deal civilly and criminally with matters in our own jurisdiction. Congress certainly did not intend to punish

criminally acts done within a foreign jurisdiction; a purpose so wholly futile is not to be attributed to Congress. *United States* v. *Freeman*, 239 U. S. 117, 120. The criminal provision strengthens the presumption that Congress intended to deal only with acts committed within the jurisdiction of the United States" (pp. 195-6).

In *Strathearn Steamship Company* v. *Dillon*, 252 U. S. 348, which involved a claim for half wages under Sec. 4 of this act, this Court said:

"In the case of *Sandberg* v. *McDonald*, 248 U. S. *supra*, we found no purpose manifested by Congress in § 11 to interfere with wages advanced in foreign ports under contracts legal where made. That section dealt with advancements, and contained no provision such as we find in § 4. Under § 4 all contracts are avoided which run counter to the purposes of the statute" (p. 355).

The exact words of Section 4, referred to above, were "all stipulations in the contract to the contrary shall be void." It was held that under this section there must be charged against the half wages earned and demanded by a seaman "all prior payments he has received." *The London*, 241 Fed. 863; *The Hougomont*, 272 Fed. 881.

The statute was further amended by the Jones Act of June 5, 1920, by the insertion in Par. (*a*) of the italicized words, quoted on page 2, *supra*.

Everything said by this Court in the *Talus* case, *supra*, applies with equal force to the present case. This is an amendment of existing law, the history of which has been traced. The plain and effective purpose of the addition of the words "whether made within or without the United States or territory subject to the jurisdiction thereof" in Par. (*a*) was to apply the statutory prohibition to advances made by American vessels in foreign ports. The remainder of the section being unchanged, the presumption is that it

has the meaning acquired by prior judicial construction. Par. (*e*) continued, without change, to limit the application of the section to foreign vessels "while in waters of the United States." The express language of the act is reinforced by every presumption. The remedial and penal provisions of the section cannot be separated, and it is not to be supposed that Congress intended to punish criminally acts done by an alien in his own country and valid there. Legislation is presumptively territorial and confined to limits over which the law-making power has jurisdiction. No public policy sanctions a refusal to recognize such a lawful and completed transaction. For so extreme a doctrine as the appellants contend, support must be found, as Judge Hough said in the *Windrush* case, "only in plain, unquestioned legislative order; and such an order cannot be discovered in this statute."

In the *Talus* case this Court pointed out the change required to make the prohibition applicable to foreign vessels abroad. Mr. Justice Day said that "had Congress intended to make void such contracts and payments, a few words would have stated that intention, not leaving such an important regulation to be gathered from implication." In making the amendment of 1920, Congress did not adopt the Supreme Court's suggestion. The amendment says nothing about making such payments void, and any contention that Par. (*a*) is applicable to foreign vessels abroad still rests on implication. In fact, the amendment, being confined to Par. (*a*) and leaving unchanged Par. (*e*), on which the *Talus* decision is founded, confirms the prior interpretation, and makes it more apparent than before that the provision as to advances was not intended to apply to foreign vessels abroad.

The petitioners' attempt (Brief, pp. 12-13), to give inde-

pendent significance to Par. (*e*) of the Jones Act is wholly ineffective. It is useless to argue that the words "while in waters of the United States" were retained for the purpose of separating the remedial from the penal provisions. The remedial and penal provisions are inseparable. *The Windrush*, 250 Fed. 180, 183. Nor do the petitioners advance their argument by the further suggestion that while the remedial and penal provisions may be co-extensive with respect to American vessels, they are separable with respect to foreign vessels. For the *Talus* case involved advances by a foreign vessel in a foreign port, and it was held that the penal provision is as wide as the prohibition itself and covers every advance. 248 Fed. 670, 674; 248 U. S. 185, 186.

The Jones Act made no distinction between remedial and penal provisions. It merely inserted the words "whether made within or without the United States or territory subject to the jurisdiction thereof" after the words "The payment of such advance wages or allotment;" the word "such" referring to the advance wages forbidden and made criminally punishable by the two preceding sentences of Par. (*a*). The retention of the word "such", which joined the sentence in which the new words were interpolated to the preceding sentences, clearly shows that Congress intended to keep the remedial provisions co-extensive with the penal provisions. If Congress had intended to separate them, it would have eliminated at least the word "such". Instead of doing that, or removing the limitation in Par. (*e*), it merely added a clause which in the light of the other provisions of the section could apply only to acts done outside the United States by American vessels. The real distinction is not between remedial and penal provisions but between American and foreign vessels abroad.

The petitioners' resort (Brief, pp. 9-10), to Senator Jones's remarks when the amendment of 1920 was under consideration in the Senate is futile. He did not mention foreign vessels, nor would his personal views have any bearing upon the construction of the statute. This Court has held repeatedly that the debates in Congress are no guide to the meaning of statutes. *United States* v. *Freight Association*, 166 U. S. 290, 318; *Pennsylvania Railroad Co.* v. *International Coal Co.*, 230 U. S. 184, 198. In the former case this Court said:

"There is, too, a general acquiescence in the doctrine that debates in Congress are not appropriate sources of information from which to discover the meaning of the language of a statute passed by that body. *United States* v. *Union Pacific Railroad Company*, 91 U. S. 72, 79; *Aldridge* v. *Williams*, 3 How. 9, 24, Taney, Chief Justice; *Mitchell* v. *Great Works Milling & Manufacturing Company*, 2 Story, 648, 653; *Queen* v. *Hertford College*, 3 Q. B. D. 693, 707. The reason is that it is impossible to determine with certainty what construction was put upon an act by the members of a legislative body that passed it by resorting to the speeches of individual members thereof. Those who did not speak may not have agreed with those who did; and those who spoke might differ from each other; the result being that the only proper way to construe a legislative act is from the language used in the act, and, upon occasion, by a resort to the history of the times when it was passed."

The petitioners affect surprise that Congress by the Amendment of 1920 should have singled out for legislative change one decision of the Supreme Court, and ignored another decided the same day (Brief, p. 10). Congress indicated very clearly by its act that it designed to apply the prohibition of advances to American vessels both within and without the United States; but it is pure assumption on the part of the petitioners to suppose that Congress had any interest in applying the prohibition to advances made

abroad by foreign vessels. That Congress had no such intention, and was therefore not concerned with the judicial construction of the statute in the *Talus* case, is clearly indicated, as Judge Hand held, by the absence of any change in the terms of Par. (*c*), upon which that construction was based.

The supposed disadvantage to American vessels in engaging seamen in foreign ports, under the construction of the statute by the District Court, is theoretical and illusory. American vessels sail with full crews shipped for the voyage. Only on exceptional occasions, and in small numbers, are seamen shipped abroad. And to this extent there is no disadvantage or difficulty in view of the notoriously higher wages paid by American vessels.

SECOND POINT

THE PETITIONERS WERE NOT ENTITLED TO ANY WAGES UNDER REV. ST., SECTION 4530.

We have answered the petitioners' contention as made, but it is equally clear that they were not entitled to any wages under Rev. St., Sec. 4530. That section provides that the demand shall not be made "more than once in the same harbor on the same entry". The *Archimedes* arrived in New York on Thursday, June 1. On Saturday, June 3, all the petitioners drew advances. They marked on a list the amount desired, which they received (Record, fols. 134-135, 177-80; Wilson, fols. 50, 61-62, 67; Hooper, fols. 73, 82; Jackson, fols. 92, 104, 107; Shotton, fols. 114-115, 124-125; Lewis, fols. 135, 150). Although they did not formally demand half wages as such, they received the amount asked for. The

master of the vessel told them that "they could have any reasonable amount, so long as it was due them", but that they must take it all at one time (Record, fol. 178). Having drawn once they were not entitled under the statute to another payment five days later.

The demand for half wages on June 8 was in fact a mere pretext whereby these petitioners, who were dissatisfied with a new mate (Record, fols. 145-53, 159), sought to desert the vessel without forfeiting the balance of their wages.

CONCLUSION

IT IS RESPECTFULLY SUBMITTED THAT THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED.

New York, August 25, 1926.

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